



# Debate on free movement

## Does the EU need new rules on social security co-ordination?

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For Germans, Britons and citizens of some other Member States immigration is the main concern at the EU level – according to a recent Eurobarometer survey. The issue of so-called “social benefit tourism” preoccupies not only the supporters of populist parties but also broader sections of the population. This puts even established EU-friendly parties under pressure and obliges them to address the topic.

Employed EU migrants and their family members are eligible for the same social security benefits as employed nationals. This principle of non-discrimination reflects the paramount importance of the mobility of workers for the EU economies and for European integration. For EU migrants who are not gainfully employed, however, the right of residence in partner countries and access to social security benefits there are limited.

Yet in the codified European law the entitlements of economically inactive EU migrants are not comprehensively regulated. A recent ruling by the Court of Justice of the EU (ECJ) on social assistance (Hartz IV benefits) in Germany now seems to provide more clarity: Member States are allowed to exclude economically inactive EU migrants who do not have sufficient resources for themselves and their family – and thus have no right of residence in principle – from accessing social assistance benefits. Concerning job-seeking migrants' entitlements, however, important issues are still unclear.

But “benefit tourism” is not a mass phenomenon. The majority of EU migrants, by far, are workers. There are virtually no signs to date that, as occasionally claimed, migrant flows are gravitating towards established Member States which offer generous social security systems and overburdening them.

Nevertheless, migration to claim social benefits is of questionable economic merit. In contrast to the mobility of jobseekers such migration does not foster economic growth or prosperity in the EU. Close coordination of social security systems is not a suitable driver of European integration either.

From an economic point of view there are alternative rules for access to social benefits that do not inappropriately hamper the free movement of citizens within the EU. Proposals such as introducing (longer) waiting periods for economically inactive citizens wanting to claim benefits in partner countries or switching to the home country principle when calculating social transfers to these citizens should be considered unreservedly.

Reforms should, at the very least, aim at making the current rules easier for national authorities to apply and less contestable. Much argues in favour of taking a generally more restrictive approach. This could take the wind out of the populist parties' sails and reduce an unnecessary threat to the European ideal.

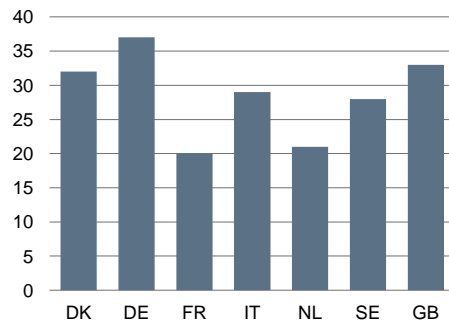


## Debate on free movement

Immigration considered one of population's main concerns at the EU level

1

% of those polled

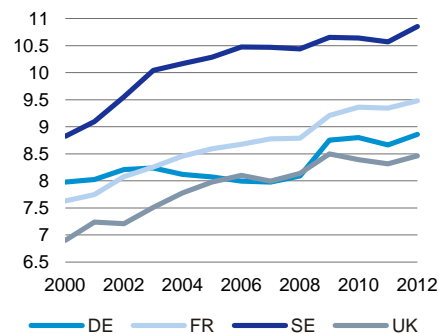


Source: Eurobarometer 82, December 2014

Social protection expenditure per capita in selected immigration countries

2

EUR '000\*



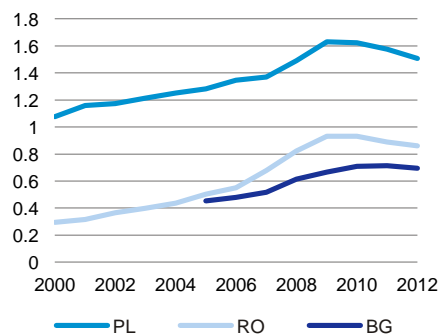
\* At 2005 prices

Source: Eurostat

Social protection expenditure per capita in selected emigration countries

3

EUR '000\*



\* At 2005 prices

Source: Eurostat

## Not only populists are calling for reforms

In the EU there is ongoing debate about so-called "social benefit tourism". Given increased migration within the EU there is growing unease in established Member States about the rules on free movement and the coordination of social security systems. Critics say that the current rules virtually invite people from southern, central and eastern Europe to migrate into the social security systems of more prosperous member countries and thus overstrain these systems.

A recent Eurobarometer survey shows just how many people are currently worried about the rising tide of migration. It reveals that, of the issues facing the EU, the item mentioned most frequently by respondents in the destination countries of Denmark, Germany and the United Kingdom is immigration.<sup>1</sup> Looking across all the Member States, immigration ranks fourth among the public's main concerns at the European level.

Not only representatives of populist parties and conservative politicians have been calling for reforms of EU law in order to prevent "benefit tourism". Rather, in the UK, for instance, even the Labour Party has launched efforts to significantly limit the claims of economically inactive EU migrants.<sup>2</sup> Back in 2013, the interior ministers of Germany, Austria, the Netherlands and the UK sent an open letter to the EU presidency and the European Commission demanding that measures be taken to deal with the consequences of migration to draw social assistance and consideration be given to possible tools to fight abuse and fraud in connection with the right to free movement.<sup>3</sup>

## Access to social security systems: EU law sets out the framework

Social policy and thus the design of social security systems in the EU are fundamentally the responsibility of the Member States. The individual Member States may not only – largely autonomously – decide the type and scope of the social benefits they offer and the principles of their funding. They can define the conditions for individual entitlement claims as well. Therefore, Europe continues to feature very differently structured social security systems. Correspondingly, the scope and level of social security differ substantially between the partner countries. For instance, per capita social expenditures in the established EU countries outstrip the readings in Central and Eastern European countries several times over.

However, the Member States are not allowed, in particular, to autonomously regulate social protection for citizens from partner countries. Instead, such arrangements must be made in harmony with higher-ranking European law. Relevant current standards in this context are not only the EU Treaty but especially the EU Directive on free movement issued in 2004<sup>4</sup> as well as EU Regulations on the coordination of social security systems from 2004 and 2009.<sup>5</sup>

<sup>1</sup> Standard-Eurobarometer 82, Autumn 2014, p. 16.

<sup>2</sup> Published by the Labour Party (2014). Only Labour will deliver the reform we need on EU migrants claiming benefits. Press release, December 12, 2014.

<sup>3</sup> See Deutscher Bundestag (2013). Drucksache 17/12895. p. 12; as well as the wording of the English original at [http://docs.dpaq.de/3604-130415\\_letter\\_to\\_presidency\\_final\\_1\\_2.pdf](http://docs.dpaq.de/3604-130415_letter_to_presidency_final_1_2.pdf).

<sup>4</sup> Directive 2004/38/EG dated April 29, 2004.

<sup>5</sup> Regulation (EC) No. 883/2004 dated April 29, 2004, Regulation (EC) No. 987/2009 dated September 16, 2009.



## Debate on free movement

Social benefits and coordination mechanisms\*

4

Rules on social security coordination are valid for nationals of the EU, Iceland, Liechtenstein, Norway and Switzerland.

With regard to these rules and EU law concerning the free movement of EU citizens (and those of the above-mentioned countries), three different types of social benefits are relevant:

1. Social security benefits. Working EU/EEA migrants (employees and the self-employed) and their family members are entitled to these benefits according to the same criteria as nationals (principle of equal treatment or non-discrimination). All entitlements or vested rights obtained in another Member State have to be preserved. Entitlements to cash benefits (such as settlement payments, unemployment insurance payments, child benefits and retirement pensions) are covered by the principle of exportability, i.e. citizens are entitled to the respective benefits even if they live in a different EU country.
2. Social assistance. No coordination mechanism exists for social assistance. However, the Directive on the right of citizens ... to move and reside freely (2004/38EC) stipulates implicitly that citizens who are neither employees nor self-employed are not eligible for social assistance for the first three months of residence in a partner country.
3. Special non-contributory cash benefits as defined by Regulation 883/2004, Art. 70. These are benefits featuring characteristics from social security as well as from social assistance. They are generally not dependent on any contribution of the beneficiary. According to prevailing legal interpretation they belong neither to the 1st nor 2nd category of benefits. However, recently the ECJ ruled that in the context of free movement and right of residence issues these benefits have to be regarded as social assistance. All EU citizens with the right of residence in the host country, whether (formerly) employed there or not, are entitled to these benefits (in principle without a waiting period). National law that limits eligibility to nationals is invalid. This strict principle of equal treatment corresponds to non-exportability as a counterbalance: people who move to another EU/EEA country are no longer entitled to these benefits.

\* See European Commission, DG Employment, Social Affairs and Inclusion and see Cornelissen, Rob (2013). EU regulations on the coordination of social security systems and special noncontributory benefits: a source of never ending controversy. In: Guild, Elspeth et al. (Eds.) (2013). Social benefits and migration. A contested relationship and policy challenge in the EU. CEPS.

## Access to benefits closely linked to the right of residence

Free movement and equal treatment (prohibition of discrimination on the basis of nationality) are the fundamental guidelines for EU citizens' social security in partner countries. These elementary principles protect the rights, in particular, of economically active migrants, i.e. both employees and the self-employed, along with their family members. And they are especially valid for entitlements to social security (insurance) systems (see box).<sup>6</sup> In principle, this elaborate protection also covers citizens who have become unemployed. All this reflects the fact that not only the free movement of goods, capital and services but also the free movement of labour have been among the four elementary freedoms of the single European market from the outset. Now, all the respective regulation holds for the European Economic Area (EEA) and Switzerland, too.

In contrast, the right of residence for migrants who are neither employees nor self-employed, and their family members, is conditional and their eligibility for social benefits limited. So the right of residence for a period longer than three months presupposes that the immigrating EU citizens have sufficient resources for themselves and their family members, and the relevant criterion here is that they must "not become an unreasonable burden on the social assistance system of the host Member State" (Directive 2004/38EC, Art. 7 and Art. 14).<sup>7</sup> Thus, Member States are allowed to restrict the right of residence of economically inactive citizens from partner countries as well as their eligibility to draw social benefits. The relevant regulations and ECJ case law aim at establishing a fair balance between economically inactive EU citizens' fundamental rights on the one hand and the Member States' legitimate wish to protect their social security systems on the other.<sup>8</sup>

EU citizens' social protection in partner countries basically depends de facto on their residence status. In short, the following major rules apply:<sup>9</sup>

- **All Union citizens have the right of free movement and residence in the host Member State for a period up to three months.** The only requirement is to hold a valid identity card or passport (Dir. 2004/38 Art. 6). During this period, however, they are generally not eligible to obtain social benefits – except in the event of medical emergencies.
- **(Migrant) Union citizens in employment (employees and the self-employed) and their family members** enjoy the same benefits and are subject to the same obligations under the legislation of any Member State as the nationals thereof (Reg. 883/2004, Art. 4).
  - About 10 hours per week in dependent employment are sufficient to obtain worker status, according to widespread opinion (see pp. 6 and 7).
  - Within the first five years of residence, immigrants who have become unemployed and dependent on public transfers may lose the right of residence if payment of such benefits becomes a burden on the social assistance system of the host Member State.
  - For employees who become (involuntarily) unemployed within the first year of residence the status of worker is to be retained for at least six months.

<sup>6</sup> This results, inter alia, in principles such as the obligation of the Member States to export cash benefits, i.e. to observe entitlements to cash benefits (e.g. retirement pensions) also in partner countries, to take account of labour and waiting periods in partner countries when calculating entitlements, and to assess family benefits according to the circumstances in the country of employment.

<sup>7</sup> See Verschueren, Herwig (2014). Free Movement or Benefit Tourism: The Unreasonable Burden of Brey. *European Journal of Migration and law* 16 (2014); pp. 147-179, here p. 151.

<sup>8</sup> *ibid.* p. 159.

<sup>9</sup> Specific regulations for students from Member States are not subject of this study.



- Union citizens who are employees or self-employed and their family members should not be expelled notwithstanding whether they have become an unreasonable burden on the social assistance system of the host Member State or not.
- **Jobseekers** (documented in Germany for example by a corresponding application with the employment agency) are eligible for limited entitlements only, i.e. they can mainly claim assistance for their job search.
  - According to widespread legal opinion, such assistance should not be subsumed under social assistance, which may in the event argue against a right of residence and related entitlements (see below).
  - Member States can restrict the jobseekers' right of residence to 6 months – apart from persons with good prospects of finding a job.
- **All Union citizens who are neither employees nor self-employed nor their family members** have the right of residence in another Member State for a period of longer than three months only if they have sufficient resources for themselves and their family and have comprehensive sickness insurance cover so that they do not become a burden on the social assistance system of the host Member State during their residence (Dir. 2004/38, Art. 7). Member States, however, are not allowed to "lay down a fixed amount which they regard as 'sufficient resources', but they must take into account the personal situation of the person concerned" (Art. 8 (4)).<sup>10</sup>
  - This group's entitlement to social assistance is very limited – besides medical emergency aid. In this respect, the principle of non-discrimination does not hold here. Fundamentally, any health services used must be reimbursed by the respective (Home) Member State.
  - "An expulsion measure shall not be the automatic consequence of a Union citizen's ... recourse to the social assistance system of the host Member State" (Dir. 2004/38, Art. 14 (3)). Instead this has to be decided on a case-by-case basis. For example, the Member State has to check whether the personal problems (economic difficulties) are of a lasting or only temporary nature.
- **In the case of abuse** Member States can refuse, terminate or withdraw the right of residence (Dir. 2004/38, Art. 35).
- **Immigrants with a permanent right of residence**, which may be obtained at the latest after an unbroken 5-year period of legal residence, have the same social rights as nationals.
  - Union citizens who have not resided legally in the host country for a continuous period of five years, for instance because they did not have sufficient resources at their disposal and inappropriately received social benefits, have no claim to permanent residence even if this is not determined until after the fact.

This is only one large swath of the rules for the social security of EU citizens. The Regulations discussed above contain further details on, for example, the provisions governing the coordination of healthcare, entitlements to health services and their funding.

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<sup>10</sup> In the respective test, applicable indicators may include not only the drawing of social assistance benefits but also availment of special non-contributory cash benefits. See Verschueren, Herwig (2014). Loc. cit. p. 157.





## Conflict between only limited right of residence for economically inactive citizens and the principle of non-discrimination

In the case of economically inactive Union citizens, the only conditional right of residence results in residence and social policy issues being intertwined. The exact scope of the stipulation that social assistance may not be accessed inappropriately has not been clarified once and for all.<sup>11</sup> This has created legal uncertainty and thus a need for supplementary legislation. The focus here is on special non-contributory cash benefits (see box p. 3). Which benefits are to be subsumed under this concept? To what degree are they relevant in the context of residence issues in accordance with Article 14 of Regulation 2004/883, i.e. when they take into account the stipulation discussed above? To what extent do the prerequisites for free movement collide with the principle of non-discrimination?<sup>12</sup>

## ECJ confirms legality of restrictive social assistance rules in Germany, ...

The ECJ has handed down several important rulings on this issue in recent months. Most recently much attention has been focused especially on a judgement pertaining to benefits granted in Germany meant to ensure the means of subsistence and provide basic benefits to job-seekers (social welfare commonly referred to in Germany as "Hartz IV").<sup>13</sup> Among other things, the ECJ ruling clearly spells out that the prohibition of discrimination on grounds of nationality also applies to special non-contributory cash benefits. There is a right of equal treatment, though, and thus entitlement to these benefits exists only in accordance with the right of residence as stipulated by Directive 2004/38. This, in turn, is contingent on a Union citizen having sufficient resources to live on and not being a recipient of social assistance.<sup>14</sup> However, the recent ECJ judgement deems special non-contributory cash benefits to be social assistance, in this context. Taking the opposite approach: If there is no right of residence, the principle of non-discrimination does not apply and Member States may exclude nationals of other Member States from drawing certain "special non-contributory cash benefits".

Among others, the question remains as to which criteria should be applied to ascertain the availability of sufficient resources and/or inappropriate availment of social benefits. While the judgement mentioned here probably focuses on the concrete (personal) financial situation of the party in question, an earlier ECJ decision refers to the social and budget policy implications. This indicates that Member States also have to examine the extent to which their social security

<sup>11</sup> Thym, Daniel (2014) Stellungnahme für die Öffentliche Anhörung des Innenausschusses des Deutschen Bundestags ...  
[http://www.bundestag.de/blob/334964/36daea697c1dac17a184b979c8ea3d80/stellungnahme\\_07-data.pdf](http://www.bundestag.de/blob/334964/36daea697c1dac17a184b979c8ea3d80/stellungnahme_07-data.pdf)

<sup>12</sup> Frings, Dorothee (w/o year of publication). Sozialeleistungen für Unionsbürger.  
[http://www.fluechtlingsinfo-berlin.de/fr/pdf/Frings\\_SGB2\\_Unionsbuenger.pdf](http://www.fluechtlingsinfo-berlin.de/fr/pdf/Frings_SGB2_Unionsbuenger.pdf)

<sup>13</sup> With its ruling of November 11, 2014 the ECJ confirmed the decision of a government job centre in Leipzig that had refused to grant Hartz IV benefits to an economically inactive Romanian woman and her son living in Germany.  
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=159442&pageIndex=0&doclang=DE&mode=lst&dir=&occ=first&part=1&cid=40714>. See also Thym, Daniel: EU-Freizügigkeit als rechtliche Konstruktion – nicht als soziale Imagination, VerfBlog, 2014/11/12, <http://www.verfassungsblog.de/eu-freizuegigkeit-als-rechtliche-konstruktion-nicht-als-soziale-imagination>.

<sup>14</sup> According to the ECJ, when appraising whether a Union citizen has sufficient resources to be able to claim a right of residence it is compulsory to conduct an individual assessment of the personal financial situation. Moreover, the ECJ repeatedly emphasised that "provisions which derogate from the principle of the exportability of social security benefits must be interpreted strictly". See loc. cit.



system is disproportionately overburdened by the fact that they grant the respective (non-contributory) cash benefit. The Member States may not draw this conclusion simply on the grounds that EU immigrants apply for this benefit. Blanket refusals based on this explanation are not compatible with EU law.<sup>15</sup>

### ... but grey areas and challenges for regulatory practice remain

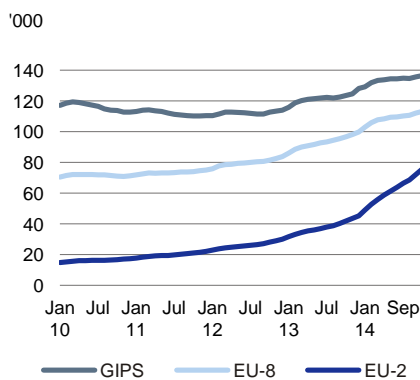
Despite the ongoing evolution of the law there are still unresolved issues in the context of right of residence. This applies to the eligibility of job-seekers in particular. Are the respective benefits social assistance that is designed to ensure only a minimum subsistence level or are they also meant to ease access to the labour market? Germany's social courts have announced varying rulings on this issue to date. The issue was recently taken to the ECJ.

There is a further grey area in Germany regarding people referred to as "Hartz IV Aufstocker". These are (foreign) workers who because of their low incomes also apply for benefits to cover subsistence costs. Unlike with economically inactive migrants who may generally be excluded from benefits in the first five years, the eligibility of low-income earners, and those with few working hours in particular, has not been settled conclusively. This holds all the more as it remains unclear as to exactly which demands must be placed on the criterion of "sufficient resources" (see above). However, difficulties can already arise with low-income migrant employees on the issue of worker status. EU law does not contain clear test criteria in respect of employment duration and required weekly working hours. The ECJ ruling is based on the assumption that the term worker may not be "interpreted in the narrow sense".<sup>16</sup> The minimum employment duration discussed above of approximately 10 hours per week is therefore only a guide from which one might even have to deviate to the downside. Ultimately, according to the Court, what is needed is an overall assessment of the job.

This shows that the Member States face significant challenges stemming from the fact that many questions concerning the right of residence and social security of economically inactive immigrants from partner countries cannot be fundamentally clarified using standard criteria. Rather, the ECJ ruling usually requires the competent authorities to take a case-by-case approach.

Germany: Social assistance recipients (SGB II) by EU country of origin

5



Source: Federal Employment Office

### "Benefit tourism" is not a mass phenomenon

Whether or not the rules on coordinating social security systems are in need of a new design should also be analysed in view of their empirical relevance. However, there is a dearth of reliable data on the costs to social security triggered by migration within the EU. For this reason, in what follows we can merely show which individual benefits are claimed by migrants in selected countries. Going by this information, the occasionally reported pessimistic picture of mass migration into the social security systems of partner countries is more or less an illusion at present. However, there is an uptrend to be seen in relevant countries.

The fact that cool heads should prevail in any related arguments is shown in Germany by the developments in social assistance (pursuant to the Code of Social Law Vol. II (SGB II)). True, the number of those eligible (Hartz IV

<sup>15</sup> This was the decision reached by the ECJ in autumn 2013 in a case applicable to Austria. At the time the issue was compensatory supplements granted by the Austrian government to pensioners whose retirement pension and other income fell below a certain threshold. See Verschueren, Herwig (2014).

<sup>16</sup> Published by the BMI and BMAS (2014). Abschlussbericht des Staatssekretärsausschusses zu "Rechtsfragen und Herausforderungen bei der Inanspruchnahme der sozialen Sicherungssysteme durch Angehörige der EU-Mitgliedstaaten", p. 45f.

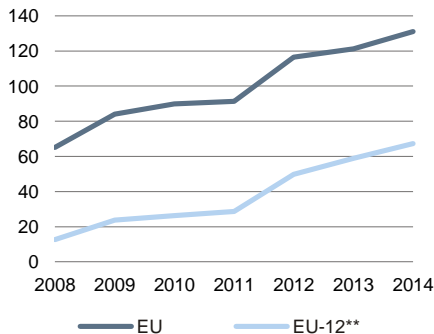


## Debate on free movement

### DWP working-age claimants\* from EU partner countries living in UK

6

February of the respective year, in '000



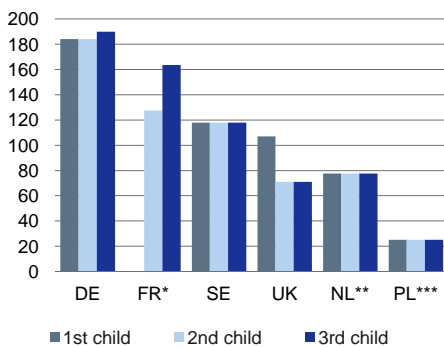
\* Jobseeker's allowance, incapacity benefits, lone parents, and others; \*\*accession countries from 2004 onwards

Source: House of Commons Library (2014)

### Child benefit by comparison

7

2014, EUR per month



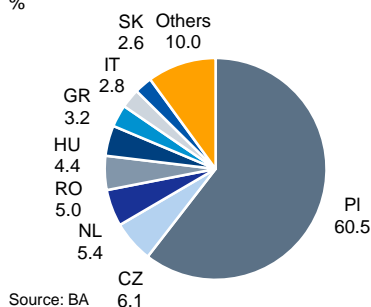
\*No benefit for the 1st child; \*\*Age dependent, here children aged from 6 to 11; \*\*\*Age dependent, here 5 to 18

Source: BMAS

### Germany: Child benefit for children living in partner states, by country of residence

8

December 2013, 68,375 children in total %



Source: BA

recipients) from the eight central and eastern European countries that acceded to the EU in 2004 increased by 44,000 persons (63%) from January 2010 to November 2014. However, the number of employees in Germany from these countries has nearly tripled, jumping by about 337,000. The employment effect is clearly predominant also for migrants from Bulgaria and Romania, the Member States that joined in 2007. This even applies to recent times starting from end-2013 when the restrictions on migrants from these two countries were lifted. The number of Bulgarian and Romanian Hartz IV recipients has since risen (up to November 2014) by roughly 34,000 persons, or 75%, while the number of workers has nearly doubled with an increase of 122,000, or 92%. The high growth rates are to be explained by the low starting levels. Among the 6.012 million people drawing benefits in Germany in total, still only small shares are claimed by immigrants from the EU-8 (1.9%) and the EU-2 (1.32%). A significant number of these aid recipients are low-income earners, who in addition to their earned income also draw government transfers. Among the recipients from Romania and Bulgaria the share is roughly 25%. In a few major cities the figure is no less than 70%, in fact.

In the United Kingdom there were some 131,000 non-British EU citizens drawing benefits, mainly jobseeker's allowance, from the Department for Work and Pensions (DWP) as of February 2014. This equalled 2.7% of all recipients of benefits. Well over half of them (67,300) come from countries that have joined the EU since 2004. In the UK the number of these recipients has also jumped. From February 2008 to February 2014 it has increased more than five-fold (versus February 2010 the increase is 157%).

However, there has been dynamic growth also in the UK in the employment of immigrants from the new Member States. The number of workers from Bulgaria and Romania, for example, was up by 18.6% in Q4 2014 on the year-earlier quarter, at 154,000 in total. And the number of employed from the EU-8 even increased by 23.1% – from a much higher starting level – to 895,000.

As with social assistance, a look at the data also puts into perspective the widespread criticism of family benefits drawn, and child benefit transfers for migrants in particular. In Germany, the authorities had granted child benefit to EU citizens from partner countries for nearly 68,400 children who were living abroad as of end-2013. This equalled 0.46% of all children eligible for this benefit. However, the number of child benefit applications from EU citizens has increased of late. For instance, the number of applications from Polish citizens went up by 34% from September 2012 to September 2014, to roughly 163,100. About one-third of the applications apply to children living in Poland.

The growth of applications reflects not only an increase in migration but also an ECJ judgement handed down in June 2012. It said that every EU migrant was entitled to child benefit if this person worked in Germany and had "unlimited tax liability", regardless of where the children lived. As a consequence, seasonal workers in particular have increasingly also submitted applications. Germany spends roughly EUR 200 m per year on child benefit for seasonal workers from partner countries.

In the United Kingdom, where child benefit for EU migrants whose children live abroad is also the subject of heavy criticism, such payments were transferred to 20,400 families for 34,300 children altogether as of end-2013.<sup>17</sup> This corresponds to 0.3% of all families entitled to child benefit. About two-thirds of the child beneficiaries living abroad are in Poland.<sup>18</sup> It is estimated that the UK

<sup>17</sup> In addition to child benefit, low-income citizens in the UK can claim supplementary payments from the tax authorities. Such benefits (child tax credit) were being paid as of end-2012 to roughly 4,000 families with 6,800 children living outside the UK in the EEA and Switzerland.

<sup>18</sup> Data for the UK refer to the EEA + Switzerland. Published by the House of Commons (2014a). Statistics on migrants and benefits. Commons Library Standard Note SN06955.



spent roughly GBP 31 m (around EUR 37 m) on such benefits in 2013.<sup>19</sup> However, the British government has not commented on this figure, repeatedly asserting that it does not have any reliable data on this matter.<sup>20</sup> Moreover, the number of cases of children living in partner countries and receiving British child benefit has fallen significantly over the past few years. In December 2013 the number was down 15% on the year-earlier figure.

### Welfare magnet effect is relatively small

The mixed data presented dovetail with the findings of scientific analyses. Various analyses offer weak evidence of a "welfare magnet effect" at best.

- Among others, a study commissioned by the European Commission from 2013 suggests that people should remain calm.<sup>21</sup> The findings indicate that the share of working-age (15+), economically inactive persons from partner countries constitutes between 0.7% and 1% of the total population in most of the EU countries (Germany 1.1%, no data for the UK). Only Belgium, Ireland (3% each) and Luxembourg (13.9%) report much higher shares. In the bulk of cases these persons are students (no claims on social security), even though substantial differences exist from country to country. However, all of these estimates refer to the year 2011.

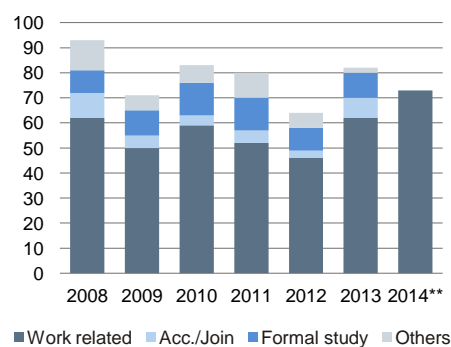
The report reaches the conclusion that there is no strict or consistent relationship between special non-contributory social benefits and the economically inactive migrant share of the population. The aspects analysed were benefits related to unemployment, disability/invalidity, single parents, students and old-age security.

- A similar outcome is found by Pedersen et al. in a study conducted in 2008.<sup>22</sup> It suggests that mainly socio-cultural factors such as language, former colonial ties or social networks arising from earlier immigration have an influence on migration, whereas the social security policy of the partner countries is not found to have any clear influence.
- By contrast, clear conclusions are drawn by the authors of a report published in 2011 by Germany's Institute for the Study of Labor. They say that internal migration in the EU does not depend on the generosity of social security benefits. This suggests, according to the authors, that the debate over migration into the social security systems of partner countries misses the point.<sup>23</sup>

UK immigration from Eastern Europe\* by main reason

9

Year end, '000



\* EU-8 + EU-2; \*\* Q3 estimates available only for work-related reasons; \*\*\* Accompany or join

### Internal migration has generally positive effects, ...

The generally positive effect of internal migration may also be favourably attributed to the regulatory status quo. In the destination countries it brings about an increase in the size of the labour pool and provides more flexibility in the labour markets. It reduces bottlenecks – in the healthcare system, for

<sup>19</sup> [https://fullfact.org/economy/child\\_benefit\\_eu\\_families-32713](https://fullfact.org/economy/child_benefit_eu_families-32713).

<sup>20</sup> Published by the House of Commons (2014b). Child Benefit and Child Tax Credit for children resident in other EEA countries. Commons Library Standard Note SN06561.

<sup>21</sup> Published by DG Employment, Social Affairs and Inclusion (2013). Fact finding analysis on the impact on Member States' social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and health care on the basis of residence. ICF GHK/Milieu Ltd Final Report. October 14, 2013.

<sup>22</sup> Pedersen, Peder J., Mariola Pytlikova & Nina Smith (2008): "Selection and Network Effects - Migration Flows into OECD Countries 1990-2000". European Economic Review. Vol. 52 (7), pp. 1160-11.

<sup>23</sup> Giulietti, Corrado et al. (2011). Unemployment Benefits and immigration: Evidence from the EU. IZA Discussion Paper No. 6075.





instance – and generally strengthens the forces of growth.<sup>24</sup> Furthermore, it brings positive fiscal effects – at least in the short run. This is suggested by various empirical studies that have been published lately:

- A current analysis conducted by the European Citizen Action Service examines fiscal effects triggered in Germany, the UK, the Netherlands and Austria, respectively, by citizens of EU partner countries living there.<sup>25</sup> More specifically, the study focuses on EU migrants living in the four countries, comparing the taxes and duties they pay with the government expenditures disbursed on social benefits for this group.

On balance, clearly positive effects are determined for Germany, the UK and Austria for 2013. The taxes and social security contributions raised by the EU migrants considerably outstrip expenditures on social benefits for the same group. In the Netherlands, however, this is only the case if the old-age security system is included. This results from the favourable age structure of the migrants in all countries.

- For the UK, Dustmann and Frattini, among others, have calculated the fiscal effects of immigration from 1995 through to 2011. In so doing, the authors took account on the expenditure side not only of social security benefits, but also spending on other public goods, and education in particular.<sup>26</sup>

The analysis, which covers the two periods from 1995 to 2000 and 2001 to 2011, shows the following: in the second period, the funding contribution of the immigrants from the partner countries is found to outstrip government spending for this group by well over one-third. This provided relief for the national budget totalling GBP 22.1 bn. However, for third-country immigrants the fiscal balance was only slightly positive (+2% or GBP 2.9 bn) due to a higher share of children and correspondingly higher expenditure attributed to education, and it was clearly negative in fact from 1995 to 2000.

- An analysis for Sweden indicates that the Bulgarians and Romanians who migrated there from 2007 to 2010 made a significant net contribution to the budget. It totalled SEK 30,000 (about EUR 3,275) per capita for 2011. These immigrants therefore generated 30% more taxes and social security contributions than they claimed for benefits and public goods (education, infrastructure, administrative services and defence).<sup>27</sup>

- In Germany, the Bertelsmann Stiftung recently published a report by Holger Bonin.<sup>28</sup> In a static analysis, Bonin netted the payments made by the foreign population to the government against the value of the government benefits claimed by the foreign citizens. For 2012, he calculated a payment surplus of EUR 3,300 per migrant. In a supplementary analysis, Bonin calculated the net present value of all payments and benefits attributable to a "benchmark" migrant for the rest of his or her life. This calculation based on generational balance sheets also still produces a positive total of EUR 22,300.

<sup>24</sup> OECD (2014). Is migration good for the economy?  
<http://www.oecd.org/migration/mig/OECD%20Migration%20Policy%20Debates%20Numero%202.pdf>

<sup>25</sup> European Citizen Action Service (2014). Fiscal Impact of EU Migrants in Austria, Germany, the Netherlands and the UK.

<sup>26</sup> Dustmann, Christian & Tommaso Frattini (2013). The Fiscal Effects of Immigration to the UK. CReAM Discussion Paper Series CDP No 22/13.

<sup>27</sup> Ruist, Joakim (2014). The fiscal consequences of unrestricted immigration from Romania and Bulgaria. CReAM Discussion Paper No 04/14. On top of this, the author contends that even higher contributions are to be expected in the UK and Ireland, since social security expenditures there are relatively low.

<sup>28</sup> Bonin, Holger (2014). Der Beitrag von Ausländern und künftiger Zuwanderung zum deutschen Staatshaushalt. Published by the Bertelsmann Stiftung.



Bonin only looked at spending on social benefits and education as government expenditure. If costs of other public goods such as infrastructure and defence are also attributed to the migrants on a pro rata basis, the funding contribution is reduced. According to the ifo Institute, the result for 2012 in fact proves to be clearly negative, at minus EUR 1,800, if all government expenditures are redistributed (if defence spending is excluded: minus EUR 1,450).<sup>29</sup> There is, of course, room for debate over which government expenditures it makes sense to include and which valuation approach to use (average costs per capita or marginal costs) when calculating fiscal effects of immigration.

### ... but problem could intensify

Obviously, the effect of internal migration mainly depends on structural factors. How old are the immigrants, what is their level of educational attainment and/or what occupational training do they possess? And what are the motives for their migration? As mentioned, it is virtually impossible to speak of a trend towards "benefit tourism" in this context. However, this does not rule out that the problem could intensify, for example via increased immigration of inadequately qualified persons from Eastern Europe or southern partner countries.

Such a scenario is encouraged by the unresolved issues of the eligibility of job-seekers and low-income earners in particular. The problem of the "working poor" also reflects the relatively low demands to be met in order to achieve worker status. Of course it is difficult for anyone who works only 10 hours per week to earn a subsistence income. And a minimum wage does not change this fact either.

Particular difficulties can arise if a sizeable number of economically inactive migrants all settle in the very same place. The German Association of Cities (Deutscher Städtetag), for example, pointed out two years ago that municipalities faced substantial challenges due to the inflow of inadequately integrated persons from Bulgaria and Romania.<sup>30</sup> However, politicians at the European and national levels have meanwhile recognised the problem and addressed it. The national authorities receive financial support from the EU, for instance, via the European Social Fund (ESF). For the budget period running until 2020 at least 20% of the ESF resources available in each Member State shall be made available for the thematic objective "promoting social inclusion, combating poverty and any discrimination".

### Arbitrage between social security systems is of questionable economic merit

Viewed in isolation, the migration of economically inactive persons from Member States with low per capita incomes into the social security systems of more prosperous Member States is undoubtedly of questionable economic merit. Such arbitrage between social security systems with differing capacities and strengths may perhaps be appealing and worthwhile for certain migrants. However, this is to the detriment of macroeconomic welfare effects of migration if sensible migration flows become misdirected. For example, migration can help reduce labour market imbalances in the EU. This is of particular importance especially in the eurozone, where there is no exchange rate mechanism to even out macroeconomic disequilibria. Unlike migrant workers, such arbitrageurs do

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<sup>29</sup> Sinn, Hans-Werner (2015). Ökonomische Effekte der Migration. Frankfurter Allgemeine Zeitung, January 3, 2015.

<sup>30</sup> Published by Deutscher Städtetag (2013). Positionspapier des Deutschen Städtetages zu den Fragen der Zuwanderung aus Rumänien und Bulgarien. January 1, 2013.



nothing to help strengthen the growth forces in the host countries. Thus, they also fail to contribute towards increasing prosperity in the EU.<sup>31</sup>

True, public budgets in the migrants' home countries enjoy relief due to lower social-policy-related expenditures, while expenditures in the host countries rise. This is likely a welcome development for the more highly indebted emigration countries in particular. However, such unsystematic financial aid between the partner countries is neither anchored in law nor economically efficient. The host countries must spend public funds on transfers to the immigrant arbitrageurs which are then unavailable for other purposes such as public investment. So while the immigration of recipients of social benefits may tend to boost private consumption in the host country, this does not have to apply to overall demand by any means. Therefore, such misdirected migration patterns should not be expected to unleash any short-term (Keynesian) demand effects.

Furthermore, a potential overburdening of the social security systems of the host countries would not be in Europe's interests either. Taking the Maastricht Treaty criterion as a benchmark, some of the important partner countries are still struggling with excessive debt loads, including Germany at around 74% of GDP and the Netherlands at roughly 70%. Developments that obstructed the still necessary consolidation of public finances would bring problems, partly because of the demographic trend in particular.

### Close coordination of social security systems is not a suitable driver of European integration

Many people have long considered a broad interpretation of the right of free movement to be a way to intensify integration and inclusion in the EU. In this view, one essential aspect of solidarity in the Union is that access to social benefits in partner countries have as few restrictions as possible also for economically inactive or at least job-seeking EU migrants. They say that this promotes mobility in the EU and contributes to greater coherence.

Intensified coordination of social policy is not a suitable driver of European integration, however. It harbours the risk of at least creeping erosion of the efficiency of established social security systems. This alone results in a contradiction of the principle that competence for social policy fundamentally lies with the Member States.

Currently, the idea of "immigration of people from other EU Member States" evokes a positive feeling among more than half of all Europeans (52%), while the idea evokes a negative feeling for 41%.<sup>32</sup> But the generally positive connotation would probably be endangered if the fear of "benefit tourism" were to continue to spread.

These concerns are already a breeding ground for populist parties today. But they have a wider reach. As a consequence, it is also harder for established parties that are kindly disposed to Europe to stay the course. It would be harmful to further integration in the EU, though, if a misguided interpretation of the principle of free movement were to damage the European idea as a whole.

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<sup>31</sup> The situation is different, though, if the migrants go to the host country in search of a job with the prospect of success. Taking up residence in the host country then makes sense, in principle, both from the individual view of the immigrant (prospect of earning income, avoidance of job qualification losing value and of generally lost employability, among others) as well as from a macroeconomic perspective (contribution towards reducing macroeconomic imbalances).

<sup>32</sup> Standard Eurobarometer 82, loc. cit., p.33.



## Limiting free movement is counterproductive

The above discussion raises the issue of whether there might be alternative rules to enable economically inactive EU citizens to access social benefits in partner countries. It is clearly obvious that there should not be any (renewed) limitations on immigration. The free movement of persons is rightly considered to be one of the key achievements of the single European market (and of the EEA). The free movement of workers is in fact tantamount to a fundamental right. In this respect, partner countries may only impose restrictions for a limited period, and seven years at the maximum, immediately after a country's accession to the EU.<sup>33</sup>

Further-reaching access barriers for citizens from partner countries, such as quotas as now provided for in draft legislation in Switzerland, would probably not be compatible with either applicable EU law or the idea of freedom inherent in the single European market. They would represent an economically damaging step backwards in the integration process. Worker migration as a mechanism to eliminate labour market imbalances should not be disengaged.

## Home country instead of host country principle: The better regulatory approach?

With regard to the above, serious proposals do not concentrate on free movement, but rather on limiting the access of economically inactive persons to social assistance and special non-contributory cash benefits. The focus is on more or less comprehensive approaches involving waiting periods, i.e. temporary access barriers to individual benefits or all such benefits.

- **Waiting periods.** The proposal to temporarily exclude EU migrants from access to certain social benefits in the host country is neither absurd nor new. In the run-up to deliberations on the Directive on free movement the European Commission also advocated excluding economically inactive EU migrants from social assistance in the first five years of residence abroad.<sup>34</sup> Today, the British Labour Party, for example, demands that the period that EU jobseekers wait before claiming out of work benefits should be extended from three months to two years.<sup>35</sup>

There are also widespread demands, especially for children living in partner countries, to be given only reduced or even no child benefit – either for a transition period or in general.<sup>36</sup>

- **Transition to home country principle.** Among other things, there are also calls for a more comprehensive, systematic introduction of a multi-year waiting period. The president of the ifo Institute, Professor Hans-Werner Sinn, has long advocated (temporarily) abandoning the host country

<sup>33</sup> At present, 13 Member States have restrictions on access to their labour markets for citizens from Croatia, which joined the EU in 2013.

<sup>34</sup> Thym, Daniel (2015). Loc. cit.

<sup>35</sup> Labour Party press release (2014). Only Labour will deliver the reform we need on EU migrants claiming benefits. LabourPress. December 12, 2014. <http://press.labour.org.uk/post/104963716449/only-labour-will-deliver-the-reform-we-need-on-eu>. Demands for waiting periods are also popular among Conservative Party supporters. See Shorthouse, Ryan and David Kirkby (2015). A balanced centre-right agenda on immigration. Understanding how Conservative voters think about immigration. Published by Bright Blue. However, cutting back on migrants' access to social benefits is not one of the Conservative Party's six top priorities for 2015. <http://www.newstatesman.com/politics/2015/01/david-cameron-outlines-tory-priorities-nhs-and-immigration-arent-included>.

<sup>36</sup> See, for example, Labour Party press release (2014). loc. cit. as well as the CSU/Bavarian government's call on the federal government to examine whether child benefit can be excluded for the first three months or graduated according to the living standards in the child's country of residence. <http://www.stmas.bayern.de/presse/pm1411-295.php>





principle in the case of fiscal transactions between immigrant EU citizens and the government, i.e. taxes and social benefits, and applying the home country principle instead.<sup>37</sup> In this event, immigrants would not receive tax-funded social benefits from the host country until after having lived there for several years. Conversely, the host country would transfer portions of migrant-generated taxes to the home countries, which would remain responsible for basic social protection during the waiting period.

Advocates of unconditional free movement will regard more restrictive rules of this type as serious setbacks on the road to closer integration in Europe. In this view, one aspect of the solidarity necessary in the Union is that more prosperous countries grant basic social protection to EU migrants. However, it is often overlooked that strong incentives for misguided internal migration resulted from overly generous established social security systems. The fact that benefit tourism is only a limited problem today does not mean that it would remain so given less stringent access rules.

However, it seems sensible to differentiate between economically inactive and job-seeking immigrants. It is no secret that Germany, the most important destination for EU migrants, has to rely on the immigration of foreign labour for demographic reasons. Therefore, providing extensive support, at least for a limited period, to persons who come to Germany in search of a job could make economic sense. Naturally, it may be difficult to distinguish between the two groups in practice. But social law in Germany and other countries such as Denmark are quite familiar with instruments that may be of assistance according to the principle of sanction and support.

## Conclusion

The rules governing the access of economically inactive and job-seeking EU migrants to social benefits in partner countries are complex and the subject of continuing debate. However, both supporters as well as opponents of changes towards more restrictive rules sometimes tend to overshoot the mark.

For example, the assertion that there is mass immigration into the social security systems of prosperous Member States is difficult to reconcile with the facts. Therefore, maintaining the regulatory status quo is scarcely likely to lead to the demise of established social security systems.

Nonetheless, the existing set of rules remains in need of repair. Too many cases are not adequately regulated. This is indicated by the unbroken need for supplementary supreme court decisions. In this context, the ECJ has repeatedly pointed to the necessity of case-by-case assessments. This represents a huge challenge for the relevant social security administrations in the host countries. But, above all, the political leaders should themselves get to grips with such central tasks as amending the right of free movement and coordinating the social security systems.

Overly ardent proponents of the status quo ought to see that there are indeed alternative rules able to counter potentially growing "benefit tourism" without inappropriately restricting free movement in the EU. Proposals such as introducing (longer) waiting periods for economically inactive citizens wanting to claim benefits in partner countries or switching to the home country principle when calculating related social transfers should be considered unreservedly.

Reforms should, at the very least, aim at making the current rules less contestable and easier for national authorities to apply. Much argues in favour of

<sup>37</sup> Sinn, Hans-Werner (2000). EU enlargement and the future of the welfare state. CESifo Working Paper No. 307.



## Debate on free movement

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a generally more restrictive approach. The closer coordination of the social security systems sought in various quarters is not suitable as a driver of European integration.

Widespread concerns in partner countries against "benefit tourism" are already a breeding ground for populist parties today. As a consequence, it is also harder for established pro-European parties to stay the course. It would be harmful to further integration in the EU, though, if a misguided interpretation of the principle of free movement were to damage the European idea as a whole.

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